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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,654	12/05/2003	Michael E. Seitz	MTC 6634.1(40-21(3584)US)	8454
321 7590 SENNIGER POWERS LLP 100 NORTH BROADWAY 17TH FLOOR ST LOUIS, MO 63102	11/06/2009		EXAMINER FRAZIER, BARBARA S	
			ART UNIT 1611	PAPER NUMBER
			NOTIFICATION DATE 11/06/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspatents@senniger.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/728,654	Applicant(s) SEITZ ET AL.
Examiner BARBARA FRAZIER	Art Unit 1611

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: 1-5, 9-12, 17-36, 40-43 and 48-69.
Claim(s) withdrawn from consideration: 6-8, 13-16, 37-39 and 44-47.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/B. F./
Examiner, Art Unit 1611

/David J Blanchard/
Primary Examiner, Art Unit 1643

Continuation of 5. Applicant's reply has overcome the following rejection(s): To clarify the record, it is noted that the provisional rejection of claims 1-5, 9-12, 17-25, 27-36, 40-43, and 48-69 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 129 and 131-153 of copending Application No. 11/113,857 set forth in the Office Action mailed 11/26/08 is withdrawn in view of Applicant's amendments to the claims filed 4/27/09. This rejection was inadvertently omitted from the final office Action mailed 8/27/09.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive for overcoming the outstanding rejection. Claims 1-5, 9-12, 17-36, 40-43, and 48-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seitz et al (US Patent 5,925,595), alone or further in view of Asrar et al (WO 2002/082901, "Asrar '901"). Applicant's arguments and graphical representations of the data in Seitz are not persuasive because they are inconsistent with the graphical representations of the data already presented by Seitz, which are identical with the graphical representation presented by Applicants of the claimed invention (compare Figure 1 of Seitz with the graph on page 30 of Applicant's Remarks). Regarding the half lives of release of Seitz, it is noted that 4 of the 5 data points presented in Figure 1 of Seitz are within the half-life range taught by Applicants, and therefore Applicant's arguments that "many" of the half lives are excessively long are unpersuasive. Applicant's arguments regarding the reproducibility of the data in Seitz (pages 34 of Remarks) are unpersuasive because the two Examples compared by Applicants are not identical; for example, Example 17, which has a longer half life, also includes the presence of a thickener, which is not present in Example 14. In response to Applicant's arguments that the prior art did not recognize a finite number of predictable solutions to the problem of preparing controlled release microcapsules, nor provide a reasonable expectation that the solutions could be achieved by employing a blend of a principal amine and an auxiliary amine, this argument is not persuasive because all of the amines taught by Seitz have the same function, i.e., are used as amines in the interfacial polymerization with polyisocyanates to form a polyurea shell for pesticidal materials, and therefore one skilled in the art would reasonably predict success from the use of more than one of said amines to form the polyurea shell, especially in light of the fact that multifunctional isocyanates are used in forming the shell wall, as taught by Seitz, and therefore would reasonably accommodate more than one amine. Furthermore, the disclosure of Asrar '901 would motivate one skilled in the art to use a blend of amines in order to further modulate the release rates of the agricultural active. In response to Applicant's arguments regarding previously undisclosed factors that may be manipulated by employing a principal amine and auxiliary amine, it is noted that said factors are already taught in the disclosure of Seitz et al; for example, Seitz et al teach that varying the ratios of isocyanates used in the formation of the shell wall will lead to optimizing properties of the shell wall, such as permeability (col. 4, line 64 - col. 5, line 7), that two components contained in the core can be released at different rates, depending on their solubility and molecular size (col. 5, lines 14-16), and the release rate of various components from the core can be modified by the addition of solvents to the core (col. 5, lines 29-31). Applicant's arguments regarding the Asrar '901 reference (pages 41-51 of Remarks) are not persuasive because the Declaration is still directed to the subject matter of U.S. Patent 6,992,047, the Declaration does not state that the subject matter of the '047 reference is the same as the '901 reference, and arguments of counsel, while lengthy, cannot take the place of evidence of record.